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6 CYBOENERGY, INC.,
7 Plaintiff,
8 v.
9 NORTHERN ELECTRIC POWER
10 TECHNOLOGY, INC.,
11 Defendant.

Case No. [21-cv-08534-SI](#)

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**ORDER MOOTING PENDING
MOTION TO DISMISS**

Re: Dkt. No. 24

19 On April 11, 2022, defendant Northern Electric Power Technology, Inc. filed a motion to
20 dismiss the patent infringement complaint filed by plaintiff CyboEnergy, Inc. Dkt. No. 24. Twenty
21 eight days later, on May 9, 2022, CyboEnergy filed an opposition along with an Amended
22 Complaint withdrawing its claims for pre-filing indirect and willful infringement. Dkt. Nos. 33
23 (opposition), 32 (amended complaint). Defendant correctly notes the Amended Complaint is
untimely under Fed. R. Civ. P. 15(a). Dkt. No. 34.

24 Although plaintiff filed after the 21 days permitted by Rule 15, the Court will excuse the
25 timeliness issue in the interest of judicial economy and therefore consider the Amended Complaint
properly filed. The motion to dismiss is therefore **MOOT**. Defendants may file a renewed motion
to dismiss no later than June 24, 2022 and may rely on the same moving papers as the original
motion to whatever extent it wishes. The hearing currently scheduled for June 24, 22 is **VACATED**.

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IT IS SO ORDERED.

Dated: June 9, 2022



SUSAN ILLSTON
United States District Judge